

EXHIBIT B

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SPECTRUM SCIENTIFICS LLC, ET
AL.,

CASE NO. CV-20-03642 EJD

PLAINTIFFS,

SAN JOSE, CALIFORNIA

vs.

SEPTEMBER 5, 2024

CELESTRON ACQUISITION, LLC, ET
AL.,

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DEFENDANTS.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFFS: BRAUNHAGEY & BORDEN LLP
BY: MATTHEW B. BORDEN
KATIE KUSHNIR
351 CALIFORNIA STREET, 10TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

1 A P P E A R A N C E S: (CONT'D)

2 FOR THE DEFENDANTS: FROST LLP
3 BY: JOSHUA STAMBAUGH
4 LAWRENCE LIU
5 10960 WILSHIRE BOULEVARD, SUITE 2100
6 LOS ANGELES, CALIFORNIA 90024

7 ALSO PRESENT: BRAUNHAGEY & BORDEN LLP
8 BY: OLIVIA SMITH, PARALEGAL

09:34AM 1 YOU.

09:34AM 2 THIS IS A MOTION FOR CLASS CERT, AND THERE'S A MOTION TO

09:34AM 3 STRIKE AS WELL. AND I MUST HAVE LEFT MY NOTES ON MY DESK.

09:34AM 4 CAN YOU FIND THEM?

09:34AM 5 ALL RIGHT. THANK YOU.

09:34AM 6 MR. BORDEN, WOULD YOU LIKE TO BE HEARD AS TO THE MOTION

09:34AM 7 FOR CLASS CERT? MY SENSE IS THAT THERE'S GOING TO BE SOME

09:34AM 8 OVERLAP FROM THE DEFENSE ABOUT THAT, PRIMARILY ABOUT DR. ZONA'S

09:34AM 9 REPORT. AND THAT'S REALLY WHAT I HAVE SOME QUESTIONS ABOUT,

09:34AM 10 TOO, DR. ZONA'S REPORT REGARDING METHODOLOGY, REGARDING

09:35AM 11 DIFFERENT STRATEGIES THAT HE ENGAGED.

09:35AM 12 I'M CURIOUS ABOUT, I'M CURIOUS ABOUT PCE, I AM CURIOUS

09:35AM 13 ABOUT DEMAND CONTROL, I'M CURIOUS ABOUT 16.7 PERCENT. IS THIS

09:35AM 14 ARBITRARY? WHERE DID THAT COME FROM? IS THERE FOUNDATION FOR

09:35AM 15 THAT?

09:35AM 16 I'M JUST GIVING YOU A HEADS UP ON SOME OF THE ISSUES THAT

09:35AM 17 TICK OFF AS I LOOK AT HIS REPORT AND TRYING TO ANALYZE THAT.

09:35AM 18 I'M CURIOUS WHAT DOES, IF WE ADD A PCE VARIABLE, WHAT DOES

09:35AM 19 THAT DO? DID HE DO THAT ANALYSIS? WHAT IS THE RESULT OF THAT?

09:35AM 20 AND IF WE PUT IN DEMAND CONTROL INTO HIS ANALYSIS, HOW DOES

09:35AM 21 THAT CHANGE HIS, HIS REGRESSION MODEL, IF AT ALL?

09:36AM 22 SO THOSE ARE SOME OF THE HIGH POINTS THAT I KNOW YOU'LL BE

09:36AM 23 ABLE TO ANSWER FOR US.

09:36AM 24 HAVING SAID THAT, HOW WOULD YOU LIKE TO PROCEED?

09:36AM 25 MR. BORDEN: I WOULD LIKE TO PROCEED AND SORT OF

09:37AM 1 MR. BORDEN: SURE. DIFFERENT REPORT. DIFFERENT
09:37AM 2 CASE. DIFFERENT METHODOLOGY.
09:37AM 3 THE COURT: YES, OF COURSE.
09:37AM 4 MR. BORDEN: BUT I THINK THERE'S EVEN A MORE
09:37AM 5 FUNDAMENTAL POINT, WHICH IS PROBABLY THE BEST AND MOST
09:37AM 6 COMPELLING EVIDENCE OF CLASSWIDE IMPACT, IS THE EVIDENCE OF ALL
09:37AM 7 OF THESE ANTITRUST VIOLATIONS THAT WE PUT INTO THE RECORD,
09:37AM 8 WHICH WERE ESSENTIALLY UNREBUTTED. THEY DID NOT DISPUTE THEM.
09:37AM 9 THEY DON'T DISPUTE THAT THEY ENGAGED IN THIS CONDUCT. THEY
09:38AM 10 DON'T ADDRESS OUR EVIDENCE IN ANY WAY, AND THAT'S REALLY
09:38AM 11 IMPORTANT BECAUSE EXPERTS CAN KIND OF THEORIZIZE WHATEVER THEY
09:38AM 12 WANT, BUT THEY CAN SAY SOMEBODY HAS MARKET POWER, THEY CAN SAY
09:38AM 13 SOMEBODY DOES THIS OR THAT, BUT THE WHOLE POINT OF AN ANTITRUST
09:38AM 14 VIOLATION IS TO RAISE THE PRICE ON EVERYBODY. AND THE
09:38AM 15 DEMONSTRATION OF MARKET POWER IS WHEN THEY DO THINGS LIKE
09:38AM 16 RESTRICT SUPPLY AND RAISE PRICE, AND WE HAVE EMAILS DOCUMENTING
09:38AM 17 THAT VERY THING IN THE FLESH.
09:38AM 18 SO TO -- PUTTING THE THEORY ASIDE FOR A SEC, JUST THE
09:38AM 19 EVIDENCE IS SO COMPELLING IN THIS CASE AND IT'S ENTIRELY
09:38AM 20 UNDISPUTED IN THIS RECORD.
09:38AM 21 SO I THINK THAT'S ACTUALLY THE STARTING PLACE, AND IT
09:38AM 22 SOUNDS LIKE THE COURT HAS SOME, YOU KNOW, QUESTIONS ABOUT
09:38AM 23 DR. ZONA'S METHODOLOGY.
09:38AM 24 THE COURT: WELL, RIGHT. AND WHAT I'M SAYING IS --
09:38AM 25 AND YOU CITE IN YOUR PLEADINGS THE ORION CASE THAT YOU AND I

09:42AM 1 THAT'S WHERE HE COMES UP WITH THE 16.7 PERCENT. HE SAYS --

09:42AM 2 THE COURT: DOES HE SAY THAT?

09:42AM 3 MR. BORDEN: YEAH. AND THE 16.7 PERCENT IS BASED ON

09:42AM 4 THE SAME METHODOLOGIES THAT HE USED IN ORION, THE COURNOT

09:42AM 5 METHODOLOGY AND THE PIC METHODOLOGY, WHICH LOOK AT ANTITRUST

09:42AM 6 THEORY AND THE HISTORY OF CARTELS AND HOW MUCH MARKET SHARE

09:42AM 7 THEY HAVE AND HOW MUCH THEY'RE ABLE TO RAISE THE PRICE

09:42AM 8 DEPENDING ON HOW MANY PLAYERS ARE IN THE MARKET.

09:42AM 9 THE COURT: SO WHERE DID THE 16.7 COME FROM? WHAT

09:42AM 10 IS THE FOUNDATION FOR THAT?

09:42AM 11 MR. BORDEN: THAT'S THE COURNOT AND THE PIC MODELS

09:42AM 12 FROM DR. ZONA. IT'S THE SAME TECHNIQUE THAT HE USED IN ORION.

09:42AM 13 IT'S THE SAME TECHNIQUE THAT THE NINTH CIRCUIT AFFIRMED WHEN IT

09:42AM 14 LOOKED AT THE JUDGMENT IN ORION. IT SAYS THIS IS A PERFECTLY

09:42AM 15 FINE TECHNIQUE BECAUSE YOU DON'T HAVE A CLEAN PERIOD, YOU HAVE

09:43AM 16 TO USE SOMETHING, AND THESE ECONOMIC THEORIES ARE SOUND,

09:43AM 17 THEY'RE TESTED.

09:43AM 18 THE COURT: HE -- I'M SORRY. DID HE RUN THE THEORY

09:43AM 19 AND THEN DID THAT YIELD A 16.7 PERCENT, OR DID HE USE

09:43AM 20 16.7 PERCENT AND THEN DO HIS WORK?

09:43AM 21 DO YOU UNDERSTAND MY QUESTION?

09:43AM 22 MR. BORDEN: SO I THINK I UNDERSTAND YOUR QUESTION.

09:43AM 23 AND DR. ZONA DID THIS IN PIECES.

09:43AM 24 SO THE FIRST PIECE THAT HE DID IS HE SAID BETWEEN 2001 AND

09:43AM 25 2005, WHEN THE ACQUISITION HAPPENED, WHAT WAS THE -- WHAT

10:49AM 1 CROSS-CHECK --

10:49AM 2 MR. BORDEN: THE NINTH CIRCUIT AFFIRMED THE USE OF

10:49AM 3 COURNOT AND PIC DATA TO FIGURE OUT THE OVERCHARGE.

10:49AM 4 THE COURT: RIGHT.

10:49AM 5 MR. BORDEN: AND THAT IS THE SAME THING.

10:49AM 6 THE COURT: BUT THE 16.7 WASN'T USED IN ORION?

10:49AM 7 MR. BORDEN: 16 WAS A DIFFERENT QUESTION AND HE WAS

10:49AM 8 LOOKING AT ORION'S DATA IN PARTICULAR AS OPPOSED TO DATA ACROSS

10:49AM 9 THE CLASS.

10:49AM 10 THE COURT: SO THERE MIGHT BE A SMALL DISTINCTION

10:49AM 11 MAYBE BETWEEN ORION. I MEAN, YOU KEEP SAYING THE NINTH CIRCUIT

10:49AM 12 AFFIRMED THIS SO --

10:49AM 13 MR. BORDEN: BUT IT'S THE TECHNIQUE. THE TECHNIQUE

10:49AM 14 IS USING THE COURNOT DATA AND USING THE PIC DATA.

10:49AM 15 THE COURT: SURE. OKAY.

10:49AM 16 MR. BORDEN: THERE'S NO TECHNIQUE THAT I'M AWARE OF

10:49AM 17 OR THAT THEY'RE -- THE PERSON THAT THEY PAID TO CRITIQUE

10:50AM 18 DR. ZONA IS AWARE OF OTHER THAN USING COURNOT DATA AND PIC DATA

10:50AM 19 TO GENERATE.

10:50AM 20 THE COURT: OKAY. I DON'T THINK YOU QUARREL WITH

10:50AM 21 COURNOT AND PIC.

10:50AM 22 MR. STAMBAUGH: AS A WHOLE, NO. THE SPECIFIC

10:50AM 23 TECHNIQUE USED HERE HAS NEVER BEEN AFFIRMED BY ANY COURT EVER.

10:50AM 24 THE COURT: AND THE SPECIFIC TECHNIQUE HERE IS WHAT

10:50AM 25 IN YOUR VIEW?

10:50AM 1 MR. STAMBAUGH: IT IS TAKING WHAT YOU HAVE SAID IS
10:50AM 2 NOT A CLEAN BENCHMARK, COMPARING THE PRICES TO A 20-YEAR CLASS
10:50AM 3 PERIOD, AND THEN ARBITRARILY REDUCING IT BY 16.7 PERCENT
10:50AM 4 UNTETHERED TO ANY EMPIRICAL DATA.

10:50AM 5 THE COURT: AND, MR. BORDEN, THAT LAST PIECE, THE
10:50AM 6 16.7 PERCENT --

10:50AM 7 MR. STAMBAUGH: IT'S A PREDETERMINED OVERCHARGE.

10:50AM 8 THE COURT: WHAT IS THE CONNECTION? THAT'S THE
10:50AM 9 PIECE I'M CURIOUS ABOUT. IS IT UNTETHERED OR --

10:50AM 10 MR. BORDEN: IT IS NOT UNTETHERED. IT IS, IT IS --
10:50AM 11 AND IF YOU GO BACK TO PARAGRAPH 98, IT IS THE LOWEST AMOUNT OF
10:50AM 12 OVERCHARGE THAT THERE COULD BE. AND HE'S JUST -- HE'S PICKED
10:51AM 13 IT BECAUSE IT IS THE MOST CONSERVATIVE ESTIMATE OF WHAT THAT
10:51AM 14 OVERCHARGE COULD POSSIBLY BE.

10:51AM 15 THERE HAS TO BE SOME OVERCHARGE. THERE'S GOING TO BE AT
10:51AM 16 LEAST 16.7.

10:51AM 17 THE COURT: WHAT DID HE DO TO GET 16.7 PERCENT?

10:51AM 18 MR. BORDEN: SO HE --

10:51AM 19 THE COURT: WHAT WAS THE MATH TO GET THAT?

10:51AM 20 MR. BORDEN: THE MATH IS TWO THINGS: ONE IS HE
10:51AM 21 LOOKED AT THE COURNOT DATA --

10:51AM 22 THE COURT: OKAY.

10:51AM 23 MR. BORDEN: -- WHICH SAYS WHEN YOU HAVE A COLLUSION
10:51AM 24 AMONGST COMPETITORS, HOW MANY COMPETITORS ARE THERE, HOW MUCH
10:51AM 25 MARKET SHARE, HERE'S WHAT THE ECONOMICS TELLS US THE OVERCHARGE

10:51AM 1 SHOULD BE. SO THAT WAS METHOD ONE.

10:51AM 2 METHOD TWO IS THAT THERE IS ALL OF THIS DATA, THIS PIC

10:51AM 3 DATA, WHICH MY FRIEND DOESN'T QUARREL WITH, THAT SAYS, OKAY,

10:51AM 4 WELL, WE'VE OBSERVED DIFFERENT MARKETS, WE'VE OBSERVED WHAT

10:51AM 5 HAPPENS WHEN YOU HAVE A 70 PERCENT MARKET SHARE AND YOU'RE A --

10:52AM 6 YOU KNOW, YOU'RE THERE WITH, YOU KNOW, THREE OTHER PLAYERS, AND

10:52AM 7 WHAT HAPPENS WHEN YOU HAVE 40 PERCENT OF THE MARKET AND THERE'S

10:52AM 8 2 OTHER PLAYERS?

10:52AM 9 THE COURT: UNDERSTOOD.

10:52AM 10 MR. BORDEN: AND, AND --

10:52AM 11 THE COURT: AND DO YOU GET A NUMBER? WHAT DO YOU

10:52AM 12 GET?

10:52AM 13 MR. BORDEN: YES. IT SAYS THE STANDARD OR THE

10:52AM 14 AVERAGE OVERCHARGE IS X.

10:52AM 15 THE COURT: OKAY.

10:52AM 16 MR. BORDEN: AND HE RAN SOME TYPE OF --

10:52AM 17 THE COURT: AND THEN HE DID THOSE TWO, HE DID THOSE

10:52AM 18 TWO ANALYSES. AND WHAT DID HE DO WITH THE RESULTS OF THOSE

10:52AM 19 THAT YIELDED 16.7? DO YOU ADD THEM? DO YOU DIVIDE THEM? DO

10:52AM 20 YOU SQUARE ROOT THEM? WHAT DO YOU DO?

10:52AM 21 MR. BORDEN: HE USED REGRESSION ON THAT TO FIGURE

10:52AM 22 OUT. AND I'M LOOKING AT PARAGRAPH 97 OF --

10:52AM 23 THE COURT: YES, IF YOU COULD JUST POINT ME TO THE

10:52AM 24 REPORT THAT MS. GREICO, YOUR THIRD GRADE MATH TEACHER SAID SHOW

10:52AM 25 ME THE WORK, IF YOU JUST POINT IT OUT, I WILL LOOK AT IT.

10:55AM 1 DID WHAT HE WAS SUPPOSED TO DO WITH THE BEFORE AND AFTER
10:55AM 2 PERIOD, HE SAW THAT THERE WAS NO IMPACT, THERE WERE NO
10:55AM 3 OVERCHARGES OR CERTAINLY VERY, VERY LITTLE THAT HE COULD EVEN
10:55AM 4 SURMISE, SO HE GRABBED THE 16.7 PERCENT.
10:55AM 5 THAT'S THE DISTINCTION HERE, AND I THINK IT'S VERY
10:55AM 6 IMPORTANT FOR THE COURT TO UNDERSTAND.
10:56AM 7 MR. BORDEN: THE REPORT SAYS WHAT IT SAYS, AND HE
10:56AM 8 WALKS THROUGH HIS METHODOLOGY BEGINNING ON PARAGRAPH 95. ON 98
10:56AM 9 HE SAYS, "I HAVE USED A MARKET SHARE FOR SUNNY/SYNTA OF
10:56AM 10 40 PERCENT (WHICH LIKELY UNDERSTATES THE COMBINED SHARE OF
10:56AM 11 SUNNY AND SYNTA THUS CONSERVATIVE)."
10:56AM 12 AND THAT'S WHAT HE DID, HE TOOK THE LOWEST POSSIBLE
10:56AM 13 OVERCHARGE AND HE APPLIED IT TO THE 2001 TO 2005 PERIOD.
10:56AM 14 HE LOOKED AT DIFFERENT OVERCHARGES THAT HAPPENED AS THE
10:56AM 15 MARKET BEGAN TO CONSOLIDATE AS THE COURT IS ALREADY AWARE OF.
10:56AM 16 SO --
10:56AM 17 THE COURT: OKAY. GREAT.
10:56AM 18 MR. STAMBAUGH: THANK YOU VERY MUCH, YOUR HONOR.
10:56AM 19 THE COURT: THANKS VERY MUCH.
10:56AM 20 MR. BORDEN: THANK YOU, YOUR HONOR.
10:56AM 21 THE COURT: MATTER IS UNDER SUBMISSION. MAYBE I'LL
10:56AM 22 REACH OUT TO YOU FOR ADDITIONAL INFORMATION IF I NEED IT AS I
10:56AM 23 REVIEW IT. SO BE PREPARED FOR THAT.
10:56AM 24 MR. STAMBAUGH: VERY GOOD. THANK YOU VERY MUCH,
10:56AM 25 YOUR HONOR.

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MR. BORDEN: HAVE A GREAT AFTERNOON.

THE COURT: YOU AS WELL. THANK YOU.

(COURT CONCLUDED AT 10:57 A.M.)

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3 CERTIFICATE OF REPORTER
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I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15
16

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

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18 DATED: SEPTEMBER 11, 2024
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